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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/941,124	08/28/2001	Garnett H. Smith	2226-019	5855

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EXAMINER

TORRES VELAZQUEZ, NORCA LIZ

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 04/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/941,124	SMITH ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Norca L. Torres-Velazquez	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 07 December 2001.
- 2a) This action is FINAL.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-22 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-22 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.
 

If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>2</u> . | 6) <input type="checkbox"/> Other: _____ .                                   |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

2. Claims 1-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. On part (b), the independent claims 1, 8 and 16 recite: "... heating the fabric at between about 350 degrees...". It is not clear on weather Applicant is referring to a temperature at about 350 degrees or if there is a range and information is missing.

3. Claims 3 and 18 contain the trademark/trade name Hydrowick®. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe a wicking agent and, accordingly, the identification/description is indefinite.

4. A trademark should be accompanied by the generic terminology. Since there is no further description of the generic term of the wicking agent, for purposes of examination, any wicking agent will read on the present claims.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 4-8, 10-14, 16 and 19-22 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over RODRIGUES (US 6,046,120).

RODRIGUES discloses textiles prepared from polyester and a method that eliminates or at least reduces the shortcomings of polyester by providing a durable hydrophilic finish to polyester. The method comprises (I) applying to a fibrous web an aqueous solution comprising an anhydride based graft copolymer, an anhydride monomer and at least one terminal hydroxyl group, and a free radical initiator, and (II) drying the fibrous web at a temperature sufficient to cure the anhydride bases graft copolymer in the fibrous web. (Column 1, lines 26-50)

The reference teaches that the anhydride based graft copolymers of the invention provide a durable hydrophilic finish to textile materials, preferably textile materials prepared from polyester and blends of polyester. Such finish eliminates the shortcomings inherent in polyester such as polyester's natural affinity for oils and oil borne stains, polyester's tendency to collect soil during laundering, static cling problems inherent in polyester, and wearer discomfort resulting from the hydrophobicity of polyester. (Column 2, lines 4-12)

The RODRIGUES reference further teaches that the anhydride based graft copolymer is advantageously applied to the fibrous web in a textilemaking process prior to final drying. The treated textile is dried at the normal temperatures provided by a drying unit on a textilemaking

maching, preferably a steam heated drying cylinder. Drying temperatures generally range from about 50°C to about 120°C. The residence time of the fibrous web or textile material in the dryer unit ranges from about 5 seconds to about 200 seconds, depending on the temperature. Generally, a residence time of about at least 30 seconds is required for lower temperatures of about 50°C while less than about 10 seconds is required for higher temperatures of about 120°C. After the web or textile material with the anhydride based graft copolymer applied thereto is dried/cured, subsequent coatings or additives may be applied. (Column 4, lines 43-57) The reference teaches the use of additives such as flame retardants, fillers, pigments, dyes, softeners, post-added surfactants and catalysts, and crosslinking agents. (Column 4, lines 26-28)

The reference further teaches the use of gravure roll for applying the copolymer to the textile material. (Column 4, lines 65-67 – Column 5, line 1).

RODRIGUES also teaches that the hydrophilic finish can be applied to the textile during the dyeing process in which a dispersed dye solution is exhausted onto the textile material. (Column 5, lines 13-15)

It is noted that RODRIGUES is silent with respect to the claimed crocking index and colorfastness. However, it is reasonable to presume that the claimed crocking index and colorfastness are inherent to the invention of RODRIGUES. Support for said presumption is found in the use of the same starting materials (i.e. polyester fabric, wicking agent and disperse dyes), like processes of making the articles (i.e.,treating the fabric with the wicking agent and then applying dye), and the production of similar end-products (i.e., polyester fabric with improved physical properties, etc...). The burden is upon the Applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 594. In the alternative, the presently claimed function of crocking

index and colorfastness would obviously have been provided as a result of the inventive hydrophilic finish of the RODRIGUES reference. *Note In re Best*, 195 USPQ 433.

With regards to the claimed residence time between about 90 and 120 seconds for fixing the disperse dyes to the fabric, it is noted that it will be dependent on the particular composition of the hydrophilic finish (wicking agent), and the dye applied to the fabric. RODRIGUES teaches the general parameters for temperature and residence time known in the art. (Above) Therefore, the temperature and residence time are recognized as result effective variables in this field of endeavor and it has been held that discovering optimum values would have been or result effective variables involves only routine experimentation.

7. Claims 2, 9, 15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over RODRIGUES as applied to claims 1, 4-8, 10-14, 16 and 19-22 above, and further in view of MATSUBA et al. (US 4,101,273).

The RODRIGUES reference does not particularly disclose that the polyester fabric of their invention is a knitted fabric.

MATSUBA et al. discloses a method for dyeing or printing synthetic fiber materials with a deep color and producing synthetic fiber materials with a soft hand touch and high fastnesses without after-treatments such as washing. (Column 2, lines 48-51) The reference teaches that the synthetic fiber materials include polyester fibers. (Column 7, lines 33-36) The reference's invention addresses the need for a method of continuous dyeing for fiber materials such as woven fabric of textured polyester and knit fabric of polyester blend. (Column 1, lines 48-51)

Since both RODRIGUES and MATSUBA et al. are from the same field of endeavor, dyeing of polyester fabrics, the purpose disclosed by MATSUBA et al. would have been recognized in the pertinent art of RODRIGUES.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the method disclosed by RODRIGUES and apply it to polyester knit fabrics with the motivation of producing a knit fabric with a soft hand touch and resulting in production of dyeings with an excellent fastness, even if the after-treatments such as washing after fixing the dye are omitted as disclosed by MATSUBA et al. (Column 3, lines 30-35).

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

GROELINGER (US 4,929,471)

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Norca L. Torres-Velazquez whose telephone number is 703-306-5714. The examiner can normally be reached on Monday-Thursday 8:30-3:00 pm and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

nlt  
March 24, 2003

*Elizabeth Cole*  
ELIZABETH M. COLE  
PRIMARY EXAMINER